

**SUBCHAPTER Q: FINANCIAL ASSURANCE FOR UNDERGROUND  
INJECTION CONTROL WELLS**

**§§37.7001, 37.7011, 37.7021, 37.7031, 37.7041, 37.7051**

**Effective February 12, 2003**

**§37.7001. Applicability.**

This subchapter applies to an owner or operator required to provide financial assurance under Chapter 331 of this title (relating to Underground Injection Control). This subchapter establishes requirements for demonstrating financial assurance for plugging and abandonment, post closure, and liability.

Adopted February 24, 2000

Effective March 21, 2000

**§37.7011. Definitions.**

Definitions for terms that appear throughout this subchapter may be found in Subchapter A of this chapter (relating to General Financial Assurance Requirements) and Chapter 331 of this title (relating to Underground Injection Control), except the term “plugging and abandonment” shall mean the same as “closure.”

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Effective March 21, 2000

**§37.7021. Financial Assurance Requirements for Plugging and Abandonment**

(a) An owner or operator subject to this subchapter shall establish financial assurance for the plugging and abandonment of each existing and new Class I well, Class III well, Class I salt cavern disposal well and associated salt cavern, or as otherwise directed by the executive director, in a manner that meets the requirements of this section, in addition to the requirements specified under Subchapters A - D of this chapter (relating to General Financial Assurance Requirements; Financial Assurance Requirements for Closure, Post Closure, and Corrective Action; Financial Assurance Mechanisms for Closure, Post Closure, and Corrective Action; and Wording of the Mechanisms for Closure, Post Closure, and Corrective Action) and §331.143 of this title (relating to Cost Estimate for Plugging and Abandonment).

(b) An owner or operator subject to this subchapter may use any of the following mechanisms as specified in Subchapter C of this chapter to demonstrate financial assurance for plugging and abandonment:

(1) trust fund (fully funded or pay-in trust), except that the executive director will respond in writing within 60 days to requests for reimbursement made in accordance with §37.201(j) of this title (relating to Trust Fund);

- (2) surety bond guaranteeing payment;
- (3) surety bond guaranteeing performance;
- (4) irrevocable standby letter of credit;
- (5) insurance;
- (6) financial test; or
- (7) corporate guarantee.

(c) Owners or operators shall comply with §37.31 of this title (relating to Submission of Documents), except that evidence of financial assurance shall be submitted at least 60 days prior to commencement of drilling operations for new wells and for salt cavern disposal wells. All financial assurance mechanisms shall be in effect before commencement of drilling operations. For converted wells and other previously constructed wells, financial assurance shall be provided at least 30 days prior to permit issuance and be in effect upon permit issuance.

(d) Owners or operators using a financial test or corporate guarantee must comply with §37.141 of this title (relating to Increase in Current Cost Estimate) except that mechanism increases must be made within 90 days after the close of each succeeding fiscal year.

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**§37.7031. Financial Assurance Requirements for Post Closure.**

(a) An owner or operator subject to this subchapter may be required to establish financial assurance for post closure of each existing and new Class I hazardous well and each existing and new Class I salt cavern disposal well and associated salt cavern, in a manner that meets the requirements of this section, in addition to the requirements specified under Subchapters A, B, C, and D of this chapter (relating to General Financial Assurance Requirements; Financial Assurance Requirements for Closure, Post Closure, and Corrective Action; Financial Assurance Mechanisms for Closure, Post Closure, and Corrective Action; and Wording of the Mechanisms for Closure, Post Closure, and Corrective Action), §331.68 of this title (relating to Post-Closure Care), and §331.171 of this title (relating to Post-Closure Care).

(b) An owner or operator required to provide financial assurance for post closure may use any of the mechanisms specified in Subchapter C of this chapter to demonstrate financial assurance for post closure, except the Local Government Financial Test and Local Government Guarantee.

(c) Owners or operators shall comply with §37.31 of this title (relating to Submission of Documents), except that evidence of financial assurance for post closure shall be submitted at least 60

days prior to commencement of drilling operations for new wells and for salt cavern disposal wells. All financial assurance mechanisms shall be in effect before commencement of drilling operations. For converted wells and other previously constructed wells, financial assurance for post closure shall be provided at least 30 days prior to permit issuance and shall be in effect upon permit issuance.

(d) Owners or operators shall comply with §37.131 of this title (relating to Annual Inflation Adjustments to Current Cost Estimates), except that adjustments must be made by using an inflation factor derived from the most recent annual Implicit Price Deflator for Gross National Product published by the United States Department of Commerce in its *Survey of Current Business*.

(e) Owners or operators using a financial test or corporate guarantee must comply with §37.141 of this title (relating to Increase in Current Cost Estimate) except that mechanism increases must be made within 90 days after the close of each succeeding fiscal year.

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**§37.7041. Financial Assurance Requirements for Liability.**

(a) An owner or operator of hazardous waste injection wells subject to this subchapter shall be required to establish and maintain liability coverage for sudden and nonsudden bodily injury and property damage to third parties caused by accidental occurrences arising from operations of the facility that meets the requirements of this section, in addition to the requirements specified under Subchapters A and E - G of this chapter (relating to General Financial Assurance Requirements; Financial Assurance Requirements for Liability Coverage; Financial Assurance Mechanisms for Liability; and Wording of the Mechanisms for Liability), §305.154(a)(11) of this title (relating to Standards), and §331.142 of this title (relating to Financial Responsibility).

(1) An owner or operator required to establish and maintain liability coverage for sudden accidental occurrences must do so in the amount of at least \$1 million per occurrence with an annual aggregate of at least \$2 million, exclusive of legal defense costs.

(2) An owner or operator required to establish and maintain liability coverage for nonsudden accidental occurrences must do so in the amount of at least \$3 million per occurrence with an annual aggregate of at least \$6 million, exclusive of legal defense costs.

(3) Owners or operators who combine coverage levels for sudden and nonsudden accidental occurrences must maintain liability coverage in the amount of at least \$4 million per occurrence and \$8 million annual aggregate.

(b) An owner or operator subject to this subchapter may use any of the mechanisms specified in Subchapter F of this chapter to demonstrate financial assurance for sudden and nonsudden liability.

(c) Owners or operators required to provide liability coverage may not use a claims made insurance policy as security unless the applicant places in escrow, as provided by the executive director, an amount sufficient to pay an additional year of premiums for renewal of the policy by the state on notice of termination of coverage.

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**§37.7051. State Assumption of Responsibility.**

(a) If the State of Texas either assumes legal responsibility for an owner's or operator's compliance with plugging and abandonment, post closure, or liability requirements of this chapter or assures that funds will be available from state sources to cover the requirements, the owner or operator will be in compliance with the requirements of this chapter if the executive director determines that the state's assumption of responsibility is at least equivalent to the mechanisms specified in this chapter. The executive director will evaluate the equivalency of state guarantees principally in terms of certainty of the availability of funds for the required plugging and abandonment, post closure, or liability coverage; and the amount of funds that will be made available. The executive director may also consider other factors. The owner or operator must submit to the executive director a letter from the State of Texas describing the nature of the state's assumption of responsibility together with a letter from the owner or operator requesting that the state's assumption of responsibility be considered acceptable for meeting the requirements of this chapter. The letter from the state must include, or have attached to it, the following information: the facility's permit number, name, physical and mailing addresses, and the amount of funds for plugging and abandonment, post closure, or liability coverage that are guaranteed by the state. The executive director will notify the owner or operator of the determination regarding the acceptability of the state's guarantee in lieu of the mechanisms specified in this chapter. The executive director may require the owner or operator to submit additional information as is deemed necessary to make this determination. Upon approval by the executive director, the owner or operator will be deemed to be in compliance with the requirements of this chapter.

(b) If the State of Texas' assumption of responsibility is found acceptable as specified in subsection (a) of this section except for the amount of funds available, the owner or operator may satisfy the requirements of this chapter by use of both the state's assurance and additional financial mechanisms as specified in this chapter. The amount of funds available through the state and owner or operator's mechanisms must at least equal the required amount.

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